appellant. In our view the learned judge was correct in calling for the defence of the seventh, eighth and ninth appellants at the close of the prosecution case.

As regards the sixth appellant, there was in our view insufficient evidence of abetment at the close of the prosecution's case. In the words of the learned judge himself when he decided what sentence to impose on the sixth appellant he found that the only involvement of the sixth appellant in this case was to escort the first and second appellants from Haadyai to Penang and stayed with them in the same hotel. The photographs and the evidence of interactions may give rise to some suspicion as to the role of the sixth appellant but suspicion alone is not enough to constitute an offence of abetment. In our view the learned judge should not have called for his defence. We agreed with the learned judge that the evidence of the appellants did not raise a reasonable doubt on the prosecution's case.

The presumption of s 37(d) of the Act had not been rebutted by the first, second, third, fourth and fifth appellants. It is reasonable to infer that the secret compartments in the suitcases they were carrying were to their knowledge. It is also reasonable to infer that the weight of the drugs in the suitcases could not have gone unnoticed by the persons having control and custody of the suitcases.

All the five suitcases would appear to be identical in shape, size and make. The secret compartments were expertly made to avoid detection and from the photographs exhibited they were made in similar fashion. The drugs of approximately the same quantity were laid out in similar manner in the five suitcases. All these in our view would tend to show that it was a well-planned operation to move the drugs out of the country.

Accordingly we upheld the convictions of the first, second, third, fourth and fifth appellants. As regards the sentences passed on them the principles already established by this court ought to be upheld and indeed followed by the learned judge in this case. We therefore saw no reason to interfere with the sentences imposed.

As regards the seventh, eighth and ninth appellants we held that on the evidence considered in its totality the learned judge was correct in drawing the necessary inferences that the appellants abetted the offence of trafficking in drugs. It was a well-planned operation. We upheld the convictions and on the same principles referred to earlier we also upheld the sentences passed on them.

Accordingly the appeals against conviction and sentence were dismissed in respect of the first, second, third, fourth, fifth, seventh, eighth and ninth appellants. The sixth appellant was acquitted and discharged. The appeal by the public prosecutor against the inadequacy of sentence imposed on the sixth appellant was also dismissed.

Appeals of first to fifth and seventh to ninth appellants dismissed.
Appeal of sixth appellant allowed.

Solicitors: *Kumar, Sitham & Co; Karpal Singh & Co; R Rajasingam & Co.*

Reported by *Prof Ahmad Ibrahim*

Mohd Zainal Abidin bin Abdul Mutalib v Dato Seri Dr Mahathir bin Mohamed, Minister of Home Affairs, Malaysia and Anor

SUPREME COURT (KUALA LUMPUR) - CIVIL APPEAL NO 158 OF 1988
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED YUSOFF AND GUNN CHIT TUAN SCJJ
6 JULY 1989

Administrative Law - Application for certiorari to quash decision of Minister of Home Affairs - Minister confirming decision of Registrar of Societies - Duty of Registrar - No evidence of bad faith on part of Registrar or Minister of Home Affairs - Appeal heard by Minister - Opportunity to be heard - Doctrine of necessity - Societies Act, ss 12(3), 13(1), (2), 18 & 41(C)

Societies - Decision of Registrar of Societies cancelling the registration of society - Appeal to Minister of Home Affairs - Application for certiorari - Societies Act 1966, ss 12(3), 13(1), 18 & 41(C)

This was an application for an order of certiorari to quash the decision of the Minister of Home Affairs under s 18 of the Societies Act 1966. The Minister had heard an appeal from the Registrar of Societies and he confirmed the decision of the Registrar under s 13(1) of the Societies Act cancelling the registration of UMNO. In cancelling the registration the Registrar relied on the order of the High Court reported in [1988] 2 MLJ 129 declaring that UMNO had become an unlawful society based on what was agreed to in the High Court then that there were 30 unapproved branches. The decision of the High Court was upheld in the Supreme Court - see [1988] 3 MLJ 82. The application for certiorari was dismissed in the High Court and the appellant appealed.

Held, dismissing the appeal:

(1) The Registrar of Societies had in this case duly complied with the law by notifying the secretary-general of the society and copying the notification to the president and the treasurer. He cancelled the registration of the society on receipt of the reply from the person addressed to in the notice.

(2) There was no bad faith on the part of the Registrar as there was already a court order to the effect that UMNO was an unlawful society. Bad faith could not be imparted to the Registrar solely by not investigating after receiving the reply from the secretary-general of the society. The cancellation of the registration was proceeded with quickly to comply with the order of the court and this should not be construed as evidence of bad faith.

(3) In view of the grounds of appeal contained in the letter of the appellant addressed to the Minister there was in effect

sufficient compliance with the requirement that the appellant should be given the opportunity to be heard. Since the Minister had already the grounds of appeal with him there was no necessity for the appellant to be present before the Minister.

(4) The Minister had a legal duty to decide in this case and apart from the doctrine of necessity it must be borne in mind that in this case a court of law had already declared UMNO to be an unlawful society and in deciding the appeal there was in fact no option open to the Minister except to confirm the decision of the Registrar to cancel the registration of the society in compliance with the declaration of the court.

Cases referred to

1 *Mohd Noor bin Othman & Anor* v *Mohd Yusof Jaafar & Ors* [1988] 2 MLJ 129 (refd)
2 *Mohamed Noor bin Othman & Ors* v *Haji Mohamed Ismail bin Haji Ibrahim & Ors* [1988] 3 MLJ 82 (refd)

Legislation referred to

Societies Act 1966 ss 12(3), 13(1), (2), 18, 41(c)

Yeoh Poh San (*Mohd Shafee Abdullah* and *Puravelan* with him) for the appellant.

T Selventhiranathan (Senior Federal Counsel) for the respondents.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): By a notice of motion in the High Court the appellant sought for leave to apply for an order of certiorari to quash the decision of the Minister of Home Affairs under s 18 of the Societies Act 1966 ('the Act'). What the Minister did in his decision on 19 April 1988 was to confirm the decision of the Registrar of Societies under s 13(1) of the Act cancelling the registration of a society called the United Malay National Organization ('UMNO'). In cancelling the registration of the society the Registrar relied on the order of the High Court[1] declaring that UMNO had become an unlawful society based on what was agreed to in the High Court then that there were 30 unapproved branches. On appeal to the Supreme Court[2] it was held that the learned judge of the High Court was correct in his interpretation of s 12(3) and s 41(c) of the Act that as a result of the existence of the unapproved and unlawful branches the main body (UMNO) was also rendered unlawful by the Act.

The appeal before this court was against the refusal of the learned judge to grant leave in the said notice of motion. The gist of the grounds of decision of the learned judge is stated in his own words as follows:

> Now under s 18(f) the Minister is not required to call the applicant in person. In my opinion it is sufficient for the Minister to decide upon the representation made to him by the applicant. There is therefore no evidence that the Minister had acted without or in excess of his jurisdiction or that he had acted in bad faith. There is no evidence of any bias and certainly there is no failure of natural justice.

The appeal may briefly be dealt with in three parts.

Firstly the duty of the Registrar under s 13(2) of the Act. Before the amendment by Act A700 effective on 10 June 1988 s 12(1) and (3) of the Act produced the effect that the existence of an unapproved branch rendered not only the branch but the society itself unlawful. Section 13(2) required the Registrar before cancelling the registration of a society to notify his intention to *one or more* of the office bearers of the society and to give him or them an opportunity to submit any reasons why the registration should not be cancelled.

In the present case the Registrar notified the secretary-general of the society (UMNO) and copied the notification to the president and the treasurer. That in our view was more than sufficient compliance with the law. Encik Shafee submitted that since no period was mentioned in the notification, it was therefore a bad notice or to use his words 'a silly notice'. With due respect we disagree.

The fact that no period was prescribed in the notice worked in fact to the advantage of the addressee in the notice. This is because of the language of s 13(2) of the Act which provided that the Registrar could not cancel the registration without first receiving the reply from the person addressed to in the notice.

Secondly was there any evidence at all of bad faith on the part of the Registrar? We are of the view that looking at the allegation of bad faith on the part of the Registrar they remain only as allegations not substantiated by any credible evidence or reasonable inference. Much was said about the supposed failure of the Registrar to investigate fully before cancelling the registration of UMNO. We are unable to follow this argument. This is because there was already a court order to the effect that UMNO was an unlawful society and this finding of the court was based on the operation of the statute, that is the Societies Act itself. In the face of the court order what else could be expected of the Registrar to investigate? We cannot therefore impute bad faith on the part of the Registrar solely by not investigating after receiving the reply from the secretary-general of the society.

By the same token we also accepted the explanation of the Registrar why the cancellation was proceeded with quickly. The Registrar stated that the cancellation was in fact to comply with the order of the court and we accepted the explanation as reasonable and should not be construed as evidence of bad faith.

Finally was there any evidence at all of bad faith on the part of the Minister of Home Affairs? The Minister heard the appeal by the appellant under s 18 of the Societies Act. Here it was alleged by counsel for the appellant that there was a breach of natural justice in that: (1) the appellant was not given the opportunity to be heard; and (2) when the Minister decided on the appeal he was already the president of the new UMNO.

As regards the first point, in view of the grounds of appeal contained in the letter of the appellant addressed to the Minister of Home Affairs, there was in effect sufficient compliance with the law and since the Minister already had the grounds of appeal with him there was no necessity for the appellant to be present before the Minister.

As regards the second point it would not be out of place here to refer to the view in De Smith's *Judicial Review of Administrative Action* (4th Ed) at p 277:

> What would be the position in English administrative law if a Minister were to be called upon to decide whether or not to confirm an order made by a local authority affecting his own property? He could not lawfully transfer to another Minister his duty to decide. He might depute one of his own officials to make the decision; the decision would nevertheless be made in the Minister's name. It is submitted that the validity of the decision could not be challenged merely on the ground that the Minister was in a sense judge in his own cause; for the legal duty to decide the class of matter to which this belonged had been cast upon him, and upon him alone. (Cf *Auten* v *Rayner* [1958] 1 WLR 1300). If it were possible to show that the Minister had in fact failed to consider the merits of the order for reasons of personal interest, his decision could be successfully challenged.

Thus apart from the doctrine of necessity, we have to bear in mind that in this case a court of law had already declared UMNO to be an unlawful society and in deciding the appeal there was in fact no other option open to the Minister except to confirm the decision of the Registrar to cancel the registration of the society in compliance with the declaration of the court.

We accordingly dismissed the appeal with costs. In deference to the submission by Mr Yeoh that his client was not a man of means and that the decision of the court according to him could well pave a way for unity we allowed the deposit to be paid to the respondents as costs.

Appeal dismissed.

Yeoh Poh San & Co.

Reported by *Prof Ahmad Ibrahim*

Morgan Guaranty Trust Company of New York v Lian Seng Properties Sdn Bhd

HIGH COURT (KUALA LUMPUR) - COMPANIES (WINDING-UP) NO D1-42-577-1987
VC GEORGE J
23 JUNE 1989

Companies and Corporations - Winding-up - Supporting creditor - Whether has locus standi - Default judgment - Whether irregular or a nullity - Whether can be attacked in collateral proceedings - Application of bankruptcy rules in winding-up proceedings - Whether judgment obtained after commencement of winding-up is provable in liquidation - Lump sum agreement - When payment crystallizes - Counterclaim - Whether winding-up petition should be stayed or dismissed - Stay of execution - Stay of winding up

A winding-up petition was presented against Lian Seng Properties Sdn Bhd ('Lian Seng') by the petitioner on 10 December 1987. When the petition came up for hearing the petitioner informed the court that it has no further interest in the petition. Two supporting creditors then applied for substitution but before the application for substitution was heard, Lian Seng applied to strike off Pembinaan KSY Sdn Bhd ('KSY') as supporting creditor.

At the outset of the proceedings for striking off, KSY argued that the application to strike off was premature and that it should only be determined after substitution. KSY initially relied on the two judgments it had obtained against Lian Seng. Lian Seng challenged both the judgments. The first judgment was attacked as being a nullity and that the judgment could be impugned in collateral proceedings in which it is being relied. It was contended that by O 3 r 5(3) of the Rules of the High Court 1980 when time is computed it must exclude the weekly holidays. But KSY contended that computation ought to be by the Interpretation Act, and not by the Rules of the High Court. The second judgment was an O 14 judgment and Lian Seng contended that it was not provable in liquidation as it was obtained after the commencement of winding up. When KSY sought to rely on the lump sum agreement it was contended that the payment under the agreement was not due before the date of commencement of winding up and accordingly did not enable KSY to qualify to be a substitute petitioner. It was also argued that a genuine counterclaim is a bar to the proceeding in winding up by KSY.

Held, allowing the application to strike off KSY as a supporting creditor:

(1) The status of the applicant for substitution ought to be determined at the outset of the application for substitution as a petitioner.

(2) The computation of time for court proceedings is governed by the Rules of the High Court and not the general provisions of the Interpretation Act.

(3) The judgment entered independently of any of the Rules of the High Court ought to be regarded as a nullity.

(4) A judgment which is a nullity can be ignored or be attacked in collateral proceedings where it is sought to be relied upon.

(5) KSY has no locus standi as the right to support the petition is founded on a judgment which is a nullity.